



Montana Legislative Services Division

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SENATE NATURAL RESOURCES

EXHIBIT NO. 45

DATE Jan. 12, 2009

BILL NO. SB 4 & SB 22

May 27, 2008

TO: EQC-WPIC Subcommittee on Legislative Water Policy Administration

FR: Todd Everts & Joe Kolman, Legislative Staff

RE: Administration Options for Legislative Water Policy Development

The EQC and the WPIC have formed a joint subcommittee on Legislative Water Policy Administration for the purpose of developing some administrative options regarding the Montana Legislature's development of water policy. This joint subcommittee will meet June 10, 2008, at 5:15 p.m. in room 152 of the State Capitol. The purpose of this memorandum is to provide the joint subcommittee members with the following information:

- ✓ Historical Context for Water Policy Development
- ✓ Administrative Criteria
- ✓ Administrative Options

Historical Context for Water Policy Development

As you might imagine, the Montana Legislature has been intensely involved in water policy issues since statehood. An exhaustive review of water policy development dating back to 1889 will be left for another date and time. For purposes of this memorandum, a detailed historical review of legislative water policy development is attached. (See Appendix A (EQC, 1971 - present), Appendix B (Water Policy Committee, 1985 - 1995), and Appendix C (Water Policy Interim Committee, 2007 - July 1, 2009)).

Administrative Criteria

When developing and adopting legislative administrative options for any policy subject area including, in this case, water policy, there are certain key criteria that should be taken into consideration in order to ensure that the administrative outcome is successful. Those criteria include:

- ✓ Resource Efficiency/Allocation/Cost:
 1. Committee costs in terms of legislator (time, travel, salary), legislative staff workload (research staff, secretarial support, and IT support), and executive branch staff workload.
 2. Efficient use of legislator, legislative staff, and executive branch resources.

✓ Committee Jurisdictional Boundaries:

1. Clearly defining administrative jurisdiction boundaries eliminates duplication of effort issues with legislators, legislative staff, executive branch staff, and the public.
2. Water quality and quantity issues impact almost every conceivable natural resource and environmental issue that comes before the Legislature. Delineating water policy jurisdictional boundaries is feasible but will take some thought.

✓ Legislator Workload

✓ Development of Legislator Subject Matter Expertise

✓ Public Involvement

Administrative Options

Option A: *Status Quo or "Do Nothing" Option*

The WPIC would complete its statutorily assigned tasks and terminate on July 1, 2009. The EQC would continue to implement its statutory water policy functions.

Option B: *Eliminate the WPIC's termination date and make the WPIC permanent.*

The WPIC would become a permanent interim committee. The EQC and the WPIC would have to coordinate efforts. Items to think about include:

1. Membership of the WPIC and EQC.
2. Administrative jurisdictional issues including subject matter jurisdiction and agency oversight assignments.
3. Resource allocation for new standing committee.

Option C: *Maintain water policy development authority within EQC and allow EQC the discretion to establish a Water Policy Subcommittee*

Items to think about include:

1. Membership of the EQC and elimination of EQC term limits.
2. Resource allocation.

Option D: *Maintain water policy development authority within EQC and statutory create a standing water policy subcommittee of the EQC.*

1. Membership of the EQC and the Water Policy Subcommittee.
2. Elimination of EQC term limits.
3. Resource allocation.

Option E: *Assign water policy development authority to another interim committee.*

1. Administrative jurisdictional issues including subject matter jurisdiction and agency oversight assignments.
2. Resource allocation.

Option F: *Subcommittee generated options.*

Appendix A

Environmental Quality Council Water Policy Issues 1995-2006

When was the EQC created?

1971

House Bill No. 66 established a state policy for the environment and established the Environmental Quality Council.

Why was the EQC created?

The EQC was created to develop and create environmental and natural resource policy, generate environmental and natural resource information, and oversee the state's environmental and natural resource programs.

Number and make-up of the membership

The EQC has 17 members: 6 state senators; 6 state representatives; 4 members of the public; and, 1 nonvoting member who represents the Governor.

Statutory duties

The EQC assumed these statutory duties from the Water Policy Committee in 1995.

85-2-105. Environmental quality council — water policy duties.

(1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department [DNRC], other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) the legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties.

Between 1995 and 2005, section 85-2-105, MCA, was amended as follows:

SB 72 (1997) changed water resources data management system to water information system and changed department to natural resource information system

HB 548 (1999) added "assist with interagency coordination related to Montana's water resources" to the statutory duties.

Other statutory duties related to water policy

Section 2-15-1514, MCA, (enacted 1985) requires participation of a Legislative Services Division (changed from EQC to LSD in 1997) staff person on the natural resource data system advisory committee.

Section 2-15-1523, MCA, (enacted 1995) requires participation of a representative of the Legislative Services Division (changed from EQC to LSD in 1997) on the ground water assessment steering committee.

Section 77-5-301, *et seq.*, MCA. (enacted 1991) The legislative statement of intent requires the DNRC, along with the technical committee charged with advising the department on implementation of the streamside management zone laws, to evaluate and report on the implementation of the act to the EQC.

Section 85-2-281, MCA, (enacted 2005) requires the Water Court and the DNRC to report to the EQC on the progress of the adjudication process until 2020.

Section 85-2-350, MCA, (enacted 2005) requires the Clark Fork River Basin Task Force to report annually to the EQC.

Section 85-2-436, MCA, (enacted 1989) requires the DFWP, in conjunction with the EQC, to conduct and coordinate a study of water leasing.

Reports produced

Report on Water Policy to the 55th Legislature. 1996

A Guide to Montana Water Quality Regulation. 1997. Updated in 2002.

Wading into Montana Water Rights. 1997. Updated in 2000.

Montana Department of Fish, Wildlife and Parks' Water Leasing Study. Environmental Quality Council Final Report to the 56th Legislature. 1998

Montana's Water Policy—1997-1998. An EQC Communique to the Montana Legislature. 1998

Montana's Revised Water Quality Monitoring, Assessment, and Improvement Program (HB 546 and TMDLs in Practice) : an EQC Oversight Report to the Montana Legislature. 1999

Water Policy 2000. Report to the 57th Legislature of the State of Montana. 2000

Coal Bed Methane and Water Policy in Montana 2002. 2002

Water Rights In Montana. update and integration of DNRC and EQC reports. 2004. Updated in 2006.

Zortman and Landusky Mines: Water Quality Impacts. 2004

Montana's Water—Where is it? Who can use it? Who decides? 2004

Water Policy in Montana. 2006

Major issues analyzed and who addressed

1995-1996

No water policy subcommittee appointed: the EQC addressed these issues.

- Received updates on the State Water Plan; Renewable Resource Grant and Loan Program; activities of the Water Research Center, the Montana Water Information System, and the DFWP water leasing program.
- Held public hearings in the Big Hole River Basin to educate the Council and discuss instream flow issues.

1997-1998

Appointed a 6-member Water Policy Subcommittee that addressed these issues.

- Total maximum daily load (TMDL) study.
- Update on wetlands portions of the State Water Plan, dam-related issues, return flows, fish eradication policy, septic regulations.
- Reviewed Gallatin Valley water right/subdivision issues.
- Received the DFWP water leasing report.

1999-2000

Appointed a 3-member Water Policy Subcommittee that addressed these issues.

- Discussed proposed federal TMDL legislation.
- Received updates from the Governor's Drought Advisory Committee on the Crow Tribe-Montana water rights compact and from the Renewable Resource Grant and Loan Program and the State Library Water Information System.
- Heard presentations on coal bed methane development, Columbia River Basin issues, and Lockwood water quality issues.
- Received comments on the DEQ's proposed general permit for confined animal feeding operations. Studied water quality issues related to hog farms.
- Reviewed significant court cases related to water quality.
- Received the DFWP water leasing report.

2001-2002

Appointed a 6-member Coal Bed Methane/Water Policy Subcommittee that addressed these issues.

- Updated a *Guide to Montana Water Quality Regulation*.
- Monitored the preparation of the coal bed methane development EIS for the Powder River Basin.

- Received updates from the Governor's Drought Advisory Committee, the Natural Resource Information System, the DEQ on TMDLs, the RWRCC, and the Renewable Resource Grant and Loan Program.
- Reviewed court decisions that affected water quality issues.
- Received the DFWP water leasing report.

2003-2004

No water policy subcommittee appointed. The EQC spent a significant amount of time and resources addressing the water adjudication process in Montana. The EQC made significant recommendations to the Legislature, which the Legislature adopted. The EQC addressed these issues during the interim.

- HJR 4 water management/adjudication study.
- HJR 43 study of water quality impacts at the Zortman and Landusky Mine.
- HJR 35 study regarding Montana's share of water from the interstate tributaries pursuant to the Yellowstone River Compact.
- HJR 40 study of issues associated with water rights for private ponds for fish, wildlife, recreational, wetland, aesthetic, and gravel mining uses.

2005-2006

No water policy subcommittee appointed. The EQC Study Subcommittee addressed many of the water policy issues during the interim. The full EQC had an agenda item for water adjudication and HB 22 implementation issues for each EQC meeting during the interim.

- *Water Rights in Montana* update.
- Review of surface water/ground water interaction issues, domestic well exemption for the filing of a water right and repair of the St. Mary's Canal.
- Update of the water adjudication chronology.

Appendix B

Water Policy Committee Historic Overview (1985 - 1995)

When was the WPC created?

1985

House Bill No. 680 (HB 680) implemented the recommendations of the EQC's 1983-1984 Select Committee on Water Marketing and established a Water Policy Committee.

Why was the WPC created?

Recommended by the EQC Select Committee on Water Marketing and the 1985 Legislature to protect for present and future use Montanan's fair share of the water in interstate rivers and streams—particularly the Missouri.¹ (See also testimony from legislative hearings.)

Number and make-up of the membership

The committee consisted of 8 members, 4 from each house and each party.

"Section 20. Water policy committee. (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice-chairman. The committee shall meet as often as necessary, including during the interim between the sessions, to perform the duties specified in this section [85-2-105, MCA].

Statutory duties

The statutory duties of the Water Policy Committee were set forth in section 20 of HB 680 [85-2-105, MCA]. The section read as follows:

- "Section 20. Water policy committee. (2) On a continuing basis, the committee shall:
- (a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments which affect Montana's water resources;
 - (b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and
 - (c) communicate with the public on matters of water policy as well as the water resources of the state.
- (3) On a regular basis, the committee shall:
- (a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

¹Final Report of the Select Committee on Water Marketing to the 40th Legislature, January 1985, p 7.

(b) analyze and comment on the report of the status of the state's water development program required by 85-1-621, when filed by the department.

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature, not less than once every biennium.

Between 1985 and 1995, section 85-2-105, MCA, was amended as follows:

HB 231 (1991) changed reporting requirements

HB 608 (1993) changed "water development program" to "renewable resource grant and loan program"

SB 234 (1995) style changes, including changing "chair" to "presiding officer"

SB 398 (1995) reorganized legislative committees, abolishing the Water Policy Committee and organizing its duties under the Environmental Quality Council

Other statutory duties

85-2-436, MCA, (enacted in 1989) requires the DFWP in conjunction with the Water Policy Committee to conduct and coordinate a study of water leasing.

How long was it in existence?

10 years

In 1995, SB 398 integrated the Water Policy Committee into the EQC (number of EQC members increased from 13 to 17)

Reports produced

Report of the Water Policy Committee to the 50th Legislature of the State of Montana. 1986

Report of the Water Policy Committee to the 51st Legislature of the State of Montana. 1988

Evaluation of Montana's Water Rights Adjudication Process. 1988

Study of Water Resources Research Centers and Graduate Programs in Water Resources in the United States. 1989

Water Policy Committee. Final Report to the 52nd Legislature of the State of Montana. 1990

Water Policy Committee. Final Report to the 53rd Legislature of the State of Montana. 1992

Water Policy Committee. Final Report to the 54th Legislature of the State of Montana. 1994

Staff support

The Environmental Quality Council staff provided support to the Water Policy Committee, as described in section 20 of HB 680 [85-2-105, MCA].

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section.

Major issues analyzed over the years

1985-86

- Drought management: participated in and made recommendations to the Drought Task Force.
- Water adjudication: reviewed court cases including 1) DFWP v. Water Court—where the department asserted there were substantive errors in decreed water rights, procedural law errors in the Water Court adjudication process and in the accuracy and validity of decrees; and 2) Montana v. United States challenging the legal sufficiency of the adjudication process to consider Indian water rights. Presentations of general adjudication information were made by the Water Court, DNRC, RRWCC and others.
- Interstate water issues: worked with NCSL and other states to discuss apportionment of Missouri River Basin water.
- Monitored the development of new rules to implement the reservation process in the Missouri River Basin.
- Reviewed State Water Plan and planning process.
- Reviewed state water data availability and needs.
- Studied water use efficiency in the state.

1987-1988

- Water adjudication; HB 2 appropriated \$75,000 to the committee to conduct a thorough study of Montana's water adjudication process.
- Reviewed Montana's public trust doctrine and its application for agricultural water users
- Reviewed water development grant program.
- Promoted water research in Montana and water data management, recommended the creation of the Water Research Policy Advisory Board.
- Reviewed the State Water Plan.
- Discussed water transfers.
- Discussed hydropower development.

1989-1990

- Reviewed the BNRC and the DFWP recommendations regarding water leasing and proposed changes to the water leasing pilot program.
- Reviewed instream management strategies in Montana and implementation of the instream flow protection section of the State Water Plan.
- Supported securing stable funding sources for the Montana Water Information System
- Recommended continued funding for the Water Research Center.
- Commissioned study of water research centers and graduate programs in water research.
- Reviewed federal-state water issues, including federal concerns with the state water adjudication process, increasing state benefits from the Pick Sloan program and the federal impact on state hydropower licensing.
- Reviewed water development issues, including the rehabilitation of the Tongue River Dam and the St. Mary's canal and the protection of Missouri River water levels

1991-1992

- Dam safety study.
- Water reservation study.
- Geothermal resources study.
- Water user/recreational user fees study.
- Water leasing study.
- Oversight of State Water Plan, water development program, water research and water data management, state drought response, wilderness dam maintenance and federally reserved water rights.

1993-1994

- Late claims study.
- Weather modification study.
- Oversight of water data management, water development program, State Water Plan, water research and water leasing, state drought response, wilderness dam maintenance and water user/recreational user fees study.
- Review of instream flow issues.
- Cooperation with EQC on water quality nondegradation study.

Appendix C

Water Policy Interim Committee 2007-2009

When was the WPIC created?

House Bill 304 in 2007 established the WPIC with a termination date of July 2009.

Why was the WPIC created?

The creation of the Water Policy Interim Committee was the result of several things coming to a head between 2005 and 2007. In 2005, the Legislature approved a measure to rejuvenate water rights adjudication. In 2006, the state Supreme Court ruled that the use of groundwater wells in the Smith River Basin was affecting senior water rights holders on the river, and the system of permitting used by the state failed to recognize the connection of groundwater and surface water. To address that situation, the 2007 Legislature passed House Bill 831 regulating groundwater appropriations in closed basins.

Who is on the WPIC?

As with other interim committees subject to 5-5-211, MCA, the WPIC has eight members - two from each party in each chamber. House Bill 304 also said the WPIC members may be selected from the following standing committees:

may be selected from the following standing committees:

- * senate natural resources and energy;
- * house natural resources;
- * senate agriculture, livestock, and irrigation;
- * house agriculture;
- * senate local government; and
- * house local government.

How much did the WPIC cost?

Originally, \$50,000 was appropriated. Later, another \$15,000 was allocated to the WPIC. The WPIC is on schedule to spend most of the money allocated.

What did the WPIC do?

The WPIC met 10 times over the interim and ventured into closed basins to hear comments from some of the Montanans most affected by water management policies. In addition to Helena meetings, the WPIC held meetings in Dillon, Bozeman, Thompson Falls, Choteau, and Hamilton.

The Legislature mandated that the WPIC study a wide range of water issues in order to develop a clear policy direction and necessary legislation to guide Montana's water policy that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease. House Bill 304 assigned a bevy of specific tasks. Those tasks are summarized below.

House Bill 831 created a closed basin case study to be conducted by the Montana Bureau of Mines and Geology, with reporting to the appropriate interim committee. That has been WPIC.

House Bill 831 also required "The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation." That has been the WPIC.

The 2007 Legislature also included in HB2 funding for an Economic Analysis of Irrigated Agriculture, the final report of which must be provided to the WPIC.

Through various panel presentations and committee debate, the WPIC also discussed opencut mining as it relates to water quality and permitting; enforcement of water rights, including adjudication, local government in relation to subdivision review, instream flow and the use of fishing closures by FWP; irrigation as a component of water quantity, but also as part of agricultural policy

The WPIC is currently debating proposed recommendations and possibly legislation.

Assigned Study Tasks

1. Study Task: Review current Montana law related to mitigation, augmentation, or aquifer recharge.

WPIC Response: Reviewed staff research on HB831 issues and legal analysis of related cases. Received regular updates from the DNRC on rulemaking and implementation of HB831 provisions. Heard public comment on HB831 provisions, including presentations from applicants dealing with the new law.

2. Study Task: Analyze other states' laws and rules related to mitigation, augmentation, or aquifer recharge and the other states' experiences with applying and using mitigation, augmentation, and aquifer recharge.

WPIC Response: Reviewed staff comparison of water management in Arizona, Colorado, Idaho, and Washington. Panel discussion in July 2007 included presentations from DNRC, DEQ, consultants, hydrologists and attorneys involved in various aspects of water use in Montana. In September 2007, a review of aquifer storage and recovery in Washington by Linton Wildrick of the Pacific Ground Water Group. John Metesh in March 2008 presented a summary of an aquifer storage, recovery and recharge seminar he attended.

3. Study Task: Compare mitigation, augmentation, and aquifer recharge options and alternatives for applying the concepts in Montana water law.

WPIC Response: Panel discussion in July 2007 included presentations from John Tubbs of DNRC, David Schmidt of Water Rights Solutions, hydrologist Jim Potts of HKM Engineering, and

Cindy Younkin, a water rights attorney. In September 2007, Kirk Waren of the MBMG discussed the feasibility of aquifer storage and recovery in Montana.

4. Study Task: Analyze water quality testing requirements to ensure that the use of mitigation, augmentation, or aquifer recharge does not adversely affect ground water quality.

WPIC Response: Panel presentations in August 2007 from Tom Reid of the DEQ, Julie DalSoglio of the EPA, John Tubbs of the DNRC, MSU geologist Steve Custer, Kate Miller of the DEQ, MSU microbiologist Tim Ford, MSU civil engineer Warren Jones, research hydrologist Gary Icopini of MBMG, John Metesh of MBMG, and Tom Patton of MBMG.

5. Study Task: Analyze data developed to determine the type and amount of research, data, and analysis necessary to develop a scientifically defensible hydrogeologic assessment to be used in making informed decisions with regard to mitigation, augmentation, or aquifer recharge activity in Montana.

WPIC Response: Multiple presentations from the MBMG study regarding potential ground water withdrawal impacts on surface water and the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments.

6. Study Task: Study appropriate monitoring requirements to determine the effectiveness of mitigation, augmentation, or aquifer recharge plans.

WPIC Response: Presentations in September 2007 from Dr. William Woessner, professor of hydrology at the University of Montana, Russell Levens, a DNRC hydrologist, Kate Miller from the DEQ, and a water user, Randy Overton of RLK Hydro. Presentation on cumulative impact on water quantity in September 2007 from Mike Roberts, a DNRC surface water hydrologist, Steve Fry of Avista, a senior appropriator, and an applicant, Marc Spratt of RLK Hydro, Inc.

7. Study Task: Identify gaps in data necessary to determine appropriate locations to conduct artificial recharge of ground water.

WPIC Response: Presentations from various experts.

8. Study Task: Examine other issues related to mitigation, augmentation, or aquifer recharge in Montana to facilitate continued economic development and growth while providing reasonable protections to senior appropriators and water quality of surface and ground water resources.

WPIC Response: Panel presentations in August 2007 from attorney Russ McElyea of Moonlight Basin Ranch, Moonlight Basin Ranch, Gallatin County Planner Greg Sullivan, Tim Roark, the Gallatin County director of environmental health, and Holly Franz of PPL Montana.

Multiple presentations from the MBMG study regarding potential ground water withdrawal impacts on surface water and the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments.

9. Study Task: Study methods for the management of water to ensure compliance with closed basin law, including the artificial recharge of ground water.

WPIC Response: Reviewed staff research on the history of closed basins and legal issues, including implications of Trout Unlimited decision. Presentations in July 2007 from Rich Moy of the DNRC, Steve Kilbreath of the DEQ, consultant John Westenberg of PBS&J, hydrologist Michael Nicklin and attorney Bill Hritsko. Presentation in March 2008 from Michelle Bryan-Mudd, a UM law professor, on land use and water law.

10. Study Task: Review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for the purposes of aquifer recharge and mitigation.

WPIC Response: Presentations in September from Randy Overton of RLK Hydro, Kate Miller from the DEQ.

11. Study Task: Identify research necessary, if any, to determine alternatives and options for conducting water management through artificial recharge of ground water.

WPIC Response: Presentation in August 2007 by Tom Reid of the DEQ. Presentations in September from Randy Overton of RLK Hydro, Kate Miller from the DEQ.

12. Study Task: Conduct a water quality analysis associated with storage or introduction of surface water to ground water resources.

WPIC Response: Panel presentations in August 2007 from Tom Reid of the DEQ, Julie DalSoglio of the EPA, John Tubbs of the DNRC, MSU geologist Steve Custer, Kate Miller of the DEQ, MSU microbiologist Tim Ford, MSU civil engineer Warren Jones, research hydrologist Gary Icopini of MBMG, John Metesh of MBMG, and Tom Patton of MBMG..

13. Study Task: Identify the extent to which cumulative impacts are analyzed from a water quantity and a water quality perspective and whether or not the two findings are assessed jointly and determine the appropriate level of coordination.

WPIC Response: Presentations in September 2007 from Dr. William Woessner, professor of hydrology at the University of Montana, Russell Levens, a DNRC hydrologist, Kate Miller from the DEQ and a water user, Randy Overton of RLK Hydro. Presentation on cumulative impact on water quantity in September 2007 from Mike Roberts, a DNRC surface water hydrologist, Steve Fry of Avista, a senior appropriator and an applicant, Marc Spratt of RLK Hydro, Inc.

14. Study Task: Determine an appropriate, accurate, and time-efficient process for coordinating water quality requirements with the water appropriations process.

WPIC Response: Presentations in September 2007 from Bonnie Lovelace of the DEQ, land use attorney Myra Shults, Sanders County sanitarian Barbara Woodbury, Jim Carlson, the

environmental health director for Missoula County. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

15. Study Task: Evaluate how the department of environmental quality and the department of natural resources and conservation issue permits that affect ground water or surface water quality and whether or not the water appropriation process and the water quality process are coordinated.

WPIC Response: Presentations in September 2007 from Bonnie Lovelace of the DEQ, land use attorney Myra Shults, Sanders County sanitarian Barbara Woodbury, Jim Carlson, the environmental health director for Missoula County. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

16. Study Task: Determine if potential applicants are provided with a clear process to follow that ensures the protection of water quality and prior appropriators while allowing development in Montana.

WPIC Response: Panel presentations in August 2007 from attorney Russ McElyea of Moonlight Basin Ranch, Moonlight Basin Ranch, Gallatin County Planner Greg Sullivan, Tim Roark, the Gallatin County director of environmental health, and Holly Franz of PPL Montana. A January 2008 presentation from Lee Wolfe of East Gate Village in East Helena. Multiple presentations from DEQ and DNRC. Convened a work group of interested parties.

17. Study Task: Determine the number of exempt wells in Montana and estimate of the number of exempt wells expected to be developed by 2020.

WPIC Response: Presentation in September 2007 from Curt Martin of the DNRC as well as presentations from other DNRC staff, DEQ, the Montana Association of Realtors and the Montana Building Industry Association.

18. Study Task: Determine the types of beneficial uses to which water from exempt wells is applied.

WPIC Response: September 2007 report from Curt Martin of the DNRC.

19. Study Task: Evaluate the hydrogeologic analysis necessary to determine consumptive use on a per-acre or fraction of an acre basis and on a per-use basis.

WPIC Response: October 2007 presentations by John LaFave of the Montana Bureau of Mines and Geology and Bill Uthman, a DNRC hydrogeologist

20. Study Task: Analyze the amount of water reasonably necessary for the various beneficial uses and compare the reasonable use standard with current statutory limits, including volume, flow rate, and other criteria that the committee determines are necessary to provide for accurate and adequate measurement of water use through exempt wells.

members of the public. The WPIC addressed each study task assigned by the Legislature and delved into other areas not specifically referenced by the enabling legislation.

26. Study Task: Submit a report to the 61st legislature that provides clear policy direction and necessary legislation to guide Montana's water policy and that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease.

WPIC Response: Held meetings in closed basins where demands on water supplies are highest in an effort to elicit concerns about water management from those who deal with the issue daily. Reviewed research, solicited expert opinions and debated policy options throughout the interim.

Other Issues Examined

1. General Enforcement of Water Rights

WPIC Response: Presentations in April 2008 from Water Court Judge Bruce Loble, DNRC legal counsel Candy West, Sarah Bond of the attorney general's office, Gallatin County Attorney Marty Lambert and Lezlie Kinne, a water commissioner.

2. The Growing Communities Doctrine

WPIC Response: Presentations in March 2008 from Greg Petesch, WPIC attorney, Elaina Zlatnik of Mountain Water, and Candy West, DNRC legal counsel.

3. Instream Flows and Fishing Closures

WPIC Response: Presentation in January 2008 from Bill Schenk of the Department of Fish, Wildlife and Parks.

4. Opencut Mining

WPIC Response: The WPIC discussed opencut mining as it relates to water quality as well as permitting.